Restricted

Our #239

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
31 March 1948

UNITED STATES OF AMERICA VS TERUKICHI SAITO
UNITED STATES OF AMERICA VS SHOOICHI SASAKI
UNITED STATES OF AMERICA VS KIYAMATSU SUDA
UNITED STATES OF AMERICA VS SEIICHI YUTANI

Review of the Staff Judge Advocate

1. The attached record of trial of Terukichi Saito, Shooichi Sasaki, Kiyamatsu Suda and Seiichi Yutani at Yokohama, Japan, from 6 October to 14 October 1947 by a Military Commission appointed by paragraph 23, Special Orders No. 230, Headquarters Eighth Army, dated 1 October 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Terukichi Saito
AGE: 35
RESIDENCE: Chuo, Horonai, Mikasa-machi, Sorachi-Gun, Hokkaido
MARITAL STATUS: Married
RELATIVES: Mother, brother, sister
EDUCATION: Two years of middle school (10 years)
VOCATION: Office clerk
MILITARY CAREER: Entered the Army in December 1933; discharged 1935. Recalled in September 1937; hospitalized in December 1937; released from hospital in October 1938 and discharged. Rank: private first class.

DATE OF CONFINEMENT: 29 December 1945
DATE OF ARRAIGNMENT: 6 October 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 6 to 14 October 1947
DATE OF SENTENCE: 14 October 1947
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Shooichi Sasaki
AGE: 31
RESIDENCE: 24 Rokkenyashiki, Nakachiyama, Aza, Yoneyama-mura, Tomei-gun, Miyagi-ken
MARITAL STATUS: Married
RELATIVES: Father, mother, 4 brothers, 2 sisters
EDUCATION: Higher primary school (8 years); agricultural and dendrological school (5 years)
VOCATION: Farmer
MILITARY CAREER: Entered the Army 10 December 1936; served in Korea and China; hospitalized 12 July 1939 and discharged February 1940. Rank: master sergeant.

DATE OF CONFINEMENT: 4 January 1946
DATE OF ARRAIGNMENT: 6 October 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 6 to 14 October 1947
DATE OF SENTENCE: 14 October 1947
SENTENCE: CHL for 5 years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Kiyamatsu Suda
AGE: 31
RESIDENCE: Hokkaido, Hakodate-shi, Ugaura-cho, 11B
MARITAL STATUS: Married
RELATIVES: Five brothers, wife, daughter

DATE OF CONFINEMENT: 18 April 1946
DATE OF ARRAIGNMENT: 6 October 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 6 to 14 October 1947
DATE OF SENTENCE: 14 October 1947
SENTENCE: CHL for 7 years
CLEMENCY RECOMMENDED BY COMMISSION: No

Restricted

PURL: https://www.legal-tools.org/doc/a9087d/

Restricted

EDUCATION: Higher primary school
VOCATION: A company employee
MILITARY CAREER: Entered the Army in March 1938; discharged during the latter part of the year. Reinducted in 1939; hospitalized August 1940; discharged from the Third Military Hospital in Tokyo. Rank: private

---

NAME: Seiichi Yutani
AGE: 31
RESIDENCE: Hokkaido Hidakagun, Urakawa-cho, Higashi-machi
MARITAL STATUS: Married
RELATIVES: Father, mother, 4 brothers, sister, two children
EDUCATION: Primary school (6th grade)
VOCATION: Fisherman
MILITARY CAREER: Inducted in Army in September 1938 and served until May 1939. Hospitalized from May 1939 to June 1940; discharged. Reinducted in August 1941; discharged October 1942. Rank: private first class

DATE OF CONFINEMENT: 7 January 1946
DATE OF ARRAIGNMENT: 6 October 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 6 to 14 October 1947
DATE OF SENTENCE: 14 October 1947
SENTENCE: CHL for 10 years
CLEMENCY RECOMMENDED BY COMMISSION: No

---

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charge and Specifications:	Pleas	Findings	Legally Sustained
SAITO			
Charge: Accused, a civilian guard employed by and serving with the Imperial Japanese Army, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 31 August 1943, at Hakodate Main POW Camp, Hakodate, Hokkaido, Japan, accused, with Seiichi Yutani and Shooichi Sasaki, did willfully and unlawfully mistreat Stanley Hough and J. Hilley, British PW's, by beating and otherwise abusing them.	NG	G	Yes
Sp 2: In or about May 1943, accused did willfully and unlawfully mistreat J. Hall, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 3: In or about January 1943, accused did willfully and unlawfully mistreat P. J. W. Bray, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 4: In or about January 1944, accused did willfully and unlawfully mistreat Victor Cecil Regan and one Pvt. Wilson, British PW's, by forcing them to stand in the cold and otherwise abusing them.	NG	G	Yes

Restricted

PURL: https://www.legal-tools.org/doc/b9087d/

Restricted

Sp 5: (as amended R. 2): Between 1 January 1943 and 31 May 1944, accused did willfully and unlawfully mistreat Paul Sechak, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 6: (as amended R. 2): During 1943, accused did willfully and unlawfully mistreat L. A. G. Clayton, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 7: On numerous occasions during 1943, accused did willfully and unlawfully mistreat Edward Barry, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 8: Between 4 January 1943 and 17 February 1945, accused did willfully and unlawfully mistreat numerous American and Allied PW's, otherwise than as alleged in Specifications 1 to 7, inclusive, by beating and otherwise abusing them.	NG	G	Yes
SASAKI			
Charge: Accused, a civilian guard employed and serving with the Imperial Japanese Army, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 31 August 1943 and 30 July 1944, at Hakodate Main POW Camp, Hakodate, Hokkaido, Japan, accused, with Seiichi Yutani and Kiyomatsu Suda, did willfully and unlawfully mistreat Peter Burtonwood, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 2: On or about 31 August 1943, accused, with Seiichi Yutani and Terukichi Saito, did willfully and unlawfully mistreat Stanley Hough and J. Hilley, British PW's, by beating and otherwise abusing them.	NG	NG	---
Sp 3: Between 11 January 1943 and 30 August 1944, accused did willfully and unlawfully mistreat numerous American and Allied PW's, otherwise than as alleged in specifications 1 and 2, by beating and otherwise abusing them.	NG	G	Yes
SUDA			
Charge: Accused, a civilian employed by and serving with the Imperial Japanese Army, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes

Restricted

PURL: https://www.legal-tools.org/doc/a90087d/

Restricted

Sp 1: On or about 27 March 1944, at the Hakodate Main POW Camp, Hokkaido, Japan, accused did willfully and unlawfully mistreat Emmert C. Lentz, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 2: In or about March 1944, accused did willfully and unlawfully mistreat Hubert Smith, a British PW, by beating and otherwise abusing him.	NG	NG	---
Sp 3: In or about January 1944, accused did willfully and unlawfully mistreat James C. Young, Marlin Hooper, Jesse P. Gilleland, Michael Daly, Douglas F. Knight and Guy M. Rose, American PW's, by beating and otherwise abusing them.	NG	G	Yes
Sp 4: In or about February 1944, accused did willfully and unlawfully mistreat Leonard C. Campbell, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 5: Between 31 August 1943 and 30 July 1944, accused, with Seiichi Yutani and Shooichi Sasaki, did willfully and unlawfully mistreat Peter K. Burtonwood, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 6: Between 31 August 1943 and 10 August 1944, accused did willfully and unlawfully mistreat numerous American and Allied PW's, otherwise than as alleged in specifications 1 to 5, inclusive, by beating and otherwise abusing them.	NG	G	Yes
<u>YUTANI</u>			
Charge: Accused, a civilian guard employed by and serving with the Imperial Japanese Army, at the times and places set forth in the specifications attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 31 August 1943 and 30 July 1944, at Hakodate Main POW Camp, Hakodate, Hokkaido, Japan, accused, with Shooichi Sasaki and Kiyomatsu Suda, did willfully and unlawfully mistreat Peter Kenneth Burtonwood, a British PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 2: On numerous occasions during 1943, accused did willfully and unlawfully mistreat Edward Barry, a British PW, by beating and otherwise abusing him.	NG	G	Yes

Restricted

PURL: https://www.legal-tools.org/doc/a9087d/

Sp 3: On or about 31 August 1943, accused, with Shooichi Sasaki and Terukicki Saito, did willfully and unlawfully mistreat Stanley Hough and J. Hilley, British PW's, by beating and otherwise abusing them.	NG	NG	---
Sp 4: Between 4 January 1943 and 30 July 1944, accused did willfully and unlawfully mistreat numerous American and Allied PW's, otherwise than as alleged in specifications 1 to 3, inclusive, by beating and otherwise abusing them.	NG	G	Yes

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1 (Terukichi Saito): On or about 31 August 1943 at Hakodate Main POW Camp, Hakodate, Hokkaido, Japan, accused Terukichi Saito, with Seiichi Yutani and Shooichi Sasaki, willfully and unlawfully mistreated Stanley Hough and J. Hilley, British PW's. These two PW's went to a lavatory and were beaten by a guard with fists and a bamboo stick until unconscious. On returning to camp, accused Saito made the two PW's kneel and hold a "bucket of coal outstretched in front" of them. When the bucket sagged they were hit on the head with a "sword-stick". After one and one-half hours they lost consciousness (Ex. 2, 1).

As to Specification 2 (Terukichi Saito): On or about May 1943, at or near Hakodate Main POW Camp, the accused beat and kicked J. Hall, a British PW because he did not sing "Japanese patriotic songs loud enough on way from work." The beating took place en route from work and again when they reached camp (Ex. 3, 4, 5, 6).

As to Specification 3 (Terukichi Saito): On or about January 1943, at Hakodate Main POW Camp, P. J. W. Bray, a British PW, was engaged in carrying 110-pound bags of rivets. Being exhausted Bray dropped the bag and sank down to rest and Saito, coming on the scene, accused Bray of sleeping on the job, beat Bray with his rifle butt, and when Bray fell to the ground Saito kicked him until Bray "was practically unconscious" (Ex. 7).

As to Specification 4 (Terukichi Saito): In or about January 1944 at Hakodate Main POW Camp, Victor Cecil Regan was on fire guard after the lights were out. A fire was burning in one of the stoves and Saito accused Regan of building the fire. Regan denied building the fire and Saito demanded that Regan call the guard who had preceded him and Regan wakened Pvt. Wilson, a British PW who had preceded him on duty. Not obtaining the desired information, accused made both Regan and Wilson stand out in the snow dressed only in underclothing and wooden sabots for three-quarters of an hour (Ex. 8, 9, 10).

As to Specification 5 (Terukichi Saito): Between 1 January 1943 and 31 May 1944 at Hakodate Main POW Camp, permission had been granted a group of PW's to build a fire in a stove at a dock. The PW's were standing around the stove when accused approached and Paul Sechak, an American PW, said, "Here comes a guard". The accused heard this and accused Sechak of insulting him. He beat Sechak with his fists, then with a rifle butt, striking Sechak in the face and body. The accused became tired from the exertion of beating Sechak and had Sechak kneel while accused rested and in a few minutes accused again took to beating Sechak, this time using a 2 x 4. The beating was unmerciful. Sechak's body was black and blue, three teeth were knocked out. His left thumb was broken and he was "bleeding from the mouth, nose and head" (Ex. 8, 10, 11, 12, 27).

PURL: https://www.legal-tools.org/doc/b9087d/

As to Specification 6 (Terukichi Saito): In marching to and from work PW's were being required to sing Japanese patriotic songs. During 1943 when the PW's were returning from the camp, Saito accused L. A. C. Clayton, a British PW, of not singing. Clayton expressed resentment at having to sing and accused attacked Clayton, first with fists, then with his feet. While Clayton was down accused struck him "several blows" on the face with the butt of a rifle. The assault loosened several teeth, caused cuts in the back of Clayton's head. Clayton became unconscious and was carried back to the camp by other PW's. "The camp commandant did not know of the incident" as Clayton "did not register a complaint" (Ex. 13, 14).

As to Specification 7 (Terukichi Saito): During 1943 while at Hakodate Main POW Camp, Edward Barry, a British PW, was beaten on several occasions (Ex. 15) by Japanese guards, among them the accused Terukichi Saito. In 1943 Barry was beaten for stealing fish. He and other PW's were made to strip off boots and socks and sit on their heels with outstretched arms for several hours waiting for trial. While so waiting, each man received some form of punishment from the guards in attendance (Ex. 15).

As to Specification 8 (Terukichi Saito): Between 4 January 1943 and 17 February 1945, at or near Hakodate Main POW Camp, accused slugged Michael J. Daley two or three times in the face with his fist and hit him twice in the ribs with the butt of his rifle because Daley had not saluted accused (Ex. 12). G. Edwards, a British PW, and L.A.C. Pat Greenan, a PW, were made to sit cross-legged on gravel with their hands outstretched and "ankles pressing into the ground" because they had stolen fish. Whenever their hands dropped they were flicked under the arm with a bayonet. After about two hours both fell exhausted on the ground, and they were ordered to the guardhouse. They were unable to walk and had to crawl on their hands and knees. As they entered the guardhouse they were kicked about the body by guards. "Sito" was one of the guards who did the kicking (Ex. 16). P. Greenan was beaten by "Sito" at Hakodate for taking some salmon (Ex. 17). Douglas F. Knight, a PW, was beaten by two guards and thrown into the guardhouse for stealing a few beans that the Japanese were feeding to the horses. Accused was involved in this beating (Ex. 18). Accused alias "Billy Bennet", beat J. W. Knemner "for chewing tobacco while lying on his sleeping mat". The beating was with a stick and Knemner was badly bruised. This was in the middle of summer of 1944 (Ex. 18).

"Sito-San, nicknamed Billy Bennett", saw F. Robinson shaving with a Rolls razor. He wanted to buy it, Robinson refused to sell it; accused then wanted to borrow it and again Robinson refused. Accused became infuriated and "assaulted" Robinson and kicked him "on the shins" until Robinson fell to the floor. Robinson's leg was sore for days (Ex. 19, 20).

"Billy Bennett", accused, attacked and beat P. W. Garrod, an American PW (Ex. 26).

V. G. Bristow was told that "Billy Bennett", accused, gave cruel beatings to working parties using the butt of his rifle (Ex. 27).

Kenneth A. C. Sayer Poll, a British PW, was punched in the face and kicked in the shins by accused (Ex. 39).

Jack W. Kenner was engaged in unloading sacks of beans. Kenner was chewing tobacco but Saito, accused, thought he was chewing some of the beans. Accused beat Kenner with a bamboo stick and bruised him (Ex. 42).

"Two American POW were taken from the barracks at midnight one night in January 1945 by 'Benett' and taken to the guardhouse" and "thoroughly worked over by 'Billy Bennett' and the 'Yankee Clipper' until six o'clock in the morning" (Ex. 42).

An American PW, L. E. Cudd, was beaten by accused and one other guard with "fists, bamboo sticks, rifle butts, and wooden 'go-aheads'" when he was caught carrying an unlighted cigarette into the barracks (Ex. 42).

PURL: https://www.legal-tools.org/doc/b9087d/

As to Specification 1 (Shooichi Sasaki): Between 31 August 1943 and 30 July 1944 for no apparent reason, Peter Burtonwood, a British PW, was dragged from bed in the middle of the night by accused and then beaten by accused Yutani and Suda. Following the beating Burtonwood was made to hold a bucket of water at arm's length in front of him (Ex. 21, 34).

As to Specification 2 (Shooichi Sasaki): Not Guilty

As to Specification 3 (Shooichi Sasaki): "There was one guard nicknamed the 'Chocolate Soldier' who beat up a man named Ted Gorringe of the R.A.F. and as a result bruised his face, and blacked his eyes, the weapon he used being a broom stick, and I witnessed the incident" (See affidavit of P. J. W. Bray, Exhibit 7). "Sasaki, nicknamed 'chocolate soldier'", in the early part of January 1944 gave Otto Dickman and Andrew Pisarcyzk a beating because Dickman had hung a pair of wet socks to dry on one of the heating pipes in the barracks. They were beaten in the face with the fists of the accused for 15 or 20 minutes and their faces were cut and bruised (Ex. 22). Because of Dickman's hanging the socks on the heating pipe, Eric Becker, Harry Agro and another PW were beaten (Ex. 23, 24, 27). On or about May or June 1944, accused, in searching for concealed cigarettes, found a necklace that Joseph Hunter had made by stringing one cent Japanese coins on a chain. Accused swore in Japanese at Hunter and struck him in the face and knocked out four of Hunter's teeth (Ex. 25, 26). Corp. Hughes, L.A.C. Garrod and L.A.C. Edwards and Hunter were forced to kneel and Sasaki struck them on the head and shoulders with a baton he carried, and then went in back of them and "trod" on their toes (Ex. 25). Later in February 1945 after calling the matter of the teeth to the camp commandant's attention, Hunter was issued upper and lower dentures (Ex. 25). "Sasaki was a well-trained soldier and applied Japanese parade ground discipline to the PW's. Sasaki had a very effective punch and he usually used his fist to beat PW's" (Ex. 27). L. L. Hill, a British PW, with a group of other PW's, were lined up in two rows of five. Sasaki had the two rows face each other and for his entertainment had the two rows to strike each other until a Japanese officer came along and stopped the fighting. The officer then intimating he would teach the PW how to fight struck each PW a 'violent with his clenched' fist on the left side of the neck, sufficient to knock him spinning" (Ex. 40).

As to Specification 1 (Kiyamatsu Suda): Accused struck Lt. Col. Emmert C. Lentz, MC, "on the side of the chin twice with closed fists" apparently because Lentz was smoking in a location where "an unwritten camp regulation prohibited smoking in hospital corridor". The incident was reported and a different attitude was taken toward PW's and "Suda" apparently "lost face" because thereafter Suda "went out of his way to be pleasant towards" Lentz (Ex. 28, 29, 27).

As to Specification 2(Kiyamatsu Suda): Not Guilty

As to Specification 3 (Kiyamatsu Suda): Accused, in or about January 1944 at Hakodate Main POW Camp, beat James C. Young, Marlin Hooper, Jesse O. Gilleland, Michael Daly, Douglas F. Knight, and Guy M. Rose with a Japanese shoe because Young hadn't lined his shoes up outside the door. Young collapsed from the beating; Knight was knocked to the floor and got up crying; Rose was struck several times and fell; Gilleland was knocked to the floor (Ex. 31, 32, 33).

As to Specification 4 (Kiyamatsu Suda): In or about February 1944 at the Hakodate Main POW Camp, Leonard C. Campbell, an American PW, was beaten with fists until he was shaken up and dazed. Some shoes were not lined up as the camp orders required. The shoes were not Campbell's but belonged to another PW. Suda would not listen to Campbell and attacked him (Ex. 34).

As to Specification 5 (Kiyamatsu Suda): Between 31 August 1943 and 30 July 1944, at the Hakodate Main POW Camp, one night Peter K. Burtonwood was dragged from his bed by Sasaki and for no apparent reason was beaten by Sasaki, Yutani and the accused Suda. He was beaten until he was in a daze and his face was bruised. He was beaten until he was unconscious and revived again (Ex. 21, 34).

PURL: https://www.legal-tools.org/doc/a9087d/

As to Specification 6 (Kiyamatsu Suda): Between 31 August 1943 and 10 August 1944 at Hakodate, accused did unlawfully and willfully mistreat numerous American and Allied PW's, otherwise than those already alleged herein. Accused slapped Berry when he interceded for Lentz who was caught smoking in a forbidden area (Ex. 27). Suda struck Salley Joe Fisher and Doppert Tibbs, PW's, in the face twice (Ex. 35, 36). They were struck because a shoe was out of line. Sgt. Gibbs was struck too. "Many men in camp" were hit by Suda (Ex. 36). "Suda was frequently beating up men in the same way he beat me", Hubert Smith said in his affidavit marked Exhibit 30. Smith saw him beat PW's several times but could not recall the names of the men. Sometimes he used the butt of his rifle to strike the men on the body. Most of the beatings he gave with his fists (Ex. 30).

As to Specification 1 (Seiichi Yutani): Between 31 August 1943 and 30 July 1944 at Hakodate Main POW Camp, Peter Kenneth Burtonwood, a British PW, was apparently, for no reason at all, dragged from his bed at midnight and beaten until he was unconscious by the accused Yutani, Sasaki and Suda. He was badly bruised from the beating (Ex. 21, 34).

As to Specification 2 (Seiichi Yutani): Edward Barry, a British PW, in his affidavit marked Exhibit 15 says "During 1943 I was beaten up at different times by guards whom we knew as: Utani, Sito, and a civilian known as Kamisaware, who worked for a Stevedore Company and in charge of prisoner work parties. The beatings were by fist in most instances, but quite often a stick was used and they would hit indiscriminately on the head, face and back, unless one could manage to get out of reach. Utani frequently used a rifle butt and has struck me in the back with it many times." (Ex. 15).

As to Specification 3 (Seiichi Yutani): Not Guilty.

As to Specification 4 (Seiichi Yutani): Between 4 January 1943 and 30 July 1944, at the Hakodate Main POW Camp, the accused Seiichi Yutani did willfully and unlawfully mistreat numerous American and Allied PW's other than those above set out. Yutani "without any excuse" swung his bayonet at a man named Williams in the R.A.F. and cut his arm from elbow to wrist. "This same guard very often came round the camp at meal times and would kick over what little dinner we had. If we made the slightest murmur he would beat us". Yutani "hit eight or nine men with his hands on one occasion because they were laughing at a joke" (Ex. 10). "A British prisoner, Sayerpole, was, on one occasion, most savagely attacked by 'Utarny' who hit with the butt of his rifle so severely that he became unconscious and had to be taken back to hospital" (Ex. 26). G. W. R. Grant in an affidavit, Exhibit 37, says "I actually saw 'Yutani' and 'Saito', two of the guards, beat prisoners with their fists, rifle butts and bayonets. I cannot remember the names of the British and Americans who were beaten up in the camp. There were between 300 and 400 of us" (Ex. 37). C. Hattrick in his affidavit, Exhibit 38, says "Vi Yutani Saki. I have seen this civilian guard beat prisoners on many occasions by striking them with his fists" (Ex. 38). Yutani struck Kenneth A. C. Sayer Poll with the butt of a rifle behind the right ear and knocked him unconscious (Ex. 6, 39, 40). On or about June 1943, while several PW's were standing at attention, Yutani walked down the front of the men and struck each one a moderate blow in the face. Louis Laurent Hill was one of those struck (Ex. 40). One of the accused, "Saito Terukichi, in Exhibit 41, stated Yutani, "a civilian guard, struck a POW behind the head with the butt of his rifle and as a result, the POW fell down and was dazed a little" (Ex. 41).

b. For the Defense:

Accused Terukichi Saito, being apprised of his rights as a witness (R. 82), took the stand in his own behalf. He is a married man, 38 years of age, and has three children who are 8, 6, and 3 years of age. He was in the Japanese Army and was wounded in Shanghai by gunshot in the right shoulder. He was employed at Hakodate Main POW Camp at Hakodate, Hokkaido, Japan from 4 January 1943 to January 1945 (R. 83) as guard. The guard commander was Sasaki one of the accused. Instructions had been given the guards to "be extremely careful in handling" of the PW's, and do it in a fashion that would not be disgraceful to the Japanese people (R. 84). First Lt. Kudo had ordered accused on one or two occasions to inflict beatings but accused did not carry out the

PURL: https://www.legal-tools.org/doc/a9187d/

orders. He remembers (direct testimony) nothing regarding the incidents in Specifications 1, 2, or 3. He did not recall the names of the victims but he recalled the incident in Specification 4. A PW who was CQ had lights out and a fire burning in the stove contrary to regulations. The CQ who preceded this CQ was called to determine who had put the coal on the stove fire. Neither of the CQ's admitted knowing anything about it and accused took them outside to discuss the matter. He then took them back to the barracks and told them if such an incident occurred again, he would force the men responsible to stand out in the snow. No punishment was dealt out in this instance. Accused remembered the incident in Specification 5 where several PW's were standing around a fire. One large Dutch PW was close to the fire absorbing the heat and a small British PW was standing by "looking very cold". Accused asked the Dutch PW to step back and let the British PW up and as he did this he "playfully jabbed the navel of the Dutch PW". All the PW's around laughed except Sechak. He cursed accused. Accused understood what Sechak said and he asked Sechak to explain in Japanese and Sechak turned pale and immediately apologized. Accused said okay and left. As accused left, Sechak turned to the other PW and said something and accused thought it was ridicule. To avoid trouble accused got a wooden gun with a rubber point and then told Sechak to stand back from the stove and Sechak did as ordered. Later accused came up and "lightly tapped Sechak on the neck (with his open palm), told him to refrain from making insults". "He did not strike him and he did not kick him" (R. 85, 86; Ex. 41). Accused did not remember incidents under Specifications 6 and 7. He "lightly tapped 'Sechak' and outside of that he beat no one" (R. 86). On cross-examination accused (Saito) stated that after the war (when called before the "Central Investigation Committee of POW") he admitted he "had slapped Sechak lightly twice" (R. 89). Accused Shooichi Sasaki, being advised of his rights as a witness (R. 96), elected to take the stand and (R. 96, 97) on oath testified he was born 21 March 1917 and has three children, seven, five, and three years old. A bullet penetrated his right knee in battle in China on 12 July 1939. Accused (Sasaki) was a guard at Hakodate Main POW Camp from 11 January 1943 until 26 August 1944. He knew nothing regarding the incidents described in Specifications 1 and 2. Accused (Sasaki) struck a prisoner once during the latter part of March. Lt. Kudo, camp commander, was looking out the window when he saw PW's carrying boxes of wheat gluten similar to caramel. A PW reached into a box, took out some caramel and put them in his pocket. Lt. Kudo ordered accused to bring the prisoner up to the office, and ordered accused "to beat the guilty PW". Accused "refused". On being ordered to so act the second time accused did "unavoidably" strike the PW "twice" with an "open palm" (R. 98). This was the only time he hit a PW. He never kicked a PW.

Accused Kiyamatsu Suda, being informed of his rights as a witness (R. 102), stated he was 31 years of age and was married and had one child five years of age. He was employed at the Hakodate Main POW Camp, Hokkaido, Japan, from 1 September 1943 until June 1944 (R. 102, 103). He knew Leonard C. Campbell (Sp 4) but he had never struck or beaten him. He remembered an American officer who, contrary to regulations, was smoking in the hospital corridor (Sp. 1). Accused told the officer (POW) to get back in his room and the officer paid no attention to accused, whereupon the accused slapped the officer trying to knock the cigarette from his mouth. Accused struck the officer only once (R. 103). One evening in either February or March 1944, PW's in one of the barracks were arguing loudly after lights were out and they were supposedly in bed. Accused "gathered the four guilty prisoners of war and started out" to report the case to the daily duty officer. A PW asked accused not to report the case to the duty officer and asked that each one be slapped and the case dropped whereupon he "brought an end to this incident by giving each PW a slap" (R. 104).

Seiichi Yutani (accused) who had been advised of his rights as a witness (R. 106) took the witness stand and testified that he was born 15 September 1917, was married and had two children, two and five years of age. He was in the Japanese Army in Manchukuo until October 1939 when he was injured and returned to his homeland of Japan (R. 106). He worked at the Hakodate Main Prisoner of War Camp at Hokkaido, Japan, from 4 January 1943 until the last of March 1944. Accused did not recall or know of Burtonwood, Barry, Hough and Hilley referred to in Specifications 1, 2 and 3 (R. 107). There were two occasions

PURL: https://www.legal-tools.org/doc/a90087d/

on which accused Yutani struck PW's. Once "during the latter part of February 1943" he had orders from Lt. Kudo to hurry the men to work. Some PW's were lagging behind and accused went to the last PW and from behind tapped the PW on the shoulder and told him to hurry. The PW "suddenly thrust his elbow back and caught (accused) with the blow". Accused became angry and "pushed him with the rifle" and the "momentum of the push knocked him down" (R. 107). Accused helped him up; obtained permission to take him to the mess hall, and let him stay away from work, fed him, got medicine and hot tea for him and the PW wanted to return to work in the afternoon (R. 107). Accused had not intended to knock him down and had "no feeling of hatred or anything like that" against the PW (R. 108). Another time 20 PW's were loading Army canned rations into a barge. Some rations were stolen and after some questioning of PW's, two "admitted their guilt". Accused was about to report the matter when a representative of the 20 PW's asked him to refrain from reporting the incident to the higher authorities and asked that the PW's be punished on the spot. Therefore, he struck each of the two men, "the guilty two men, twice" (R. 108).

Hiro Tendo was called as a witness for the defense (R. 108). He was a Captain in the Japanese Army and was stationed at Hakodate Main POW Camp from 24 December 1942 until 20 July 1944. While at the camp he knew Saito, Sasaki, Suda and Yutani and identified them in the courtroom (R. 109). He never heard any complaints that these accused had struck PW's.

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. The question of sanity was never raised nor was it an issue in this trial. The accused were given a fair and impartial trial and were ably defended. Each of the accused cooperated in his own behalf. The defense was unable to examine those who proffered evidence against the accused since all of the prosecution's evidence was in the form of affidavits and statements from former PW's.

The defense in its "Motion for Modification of Findings and Sentences" charged: (1) That the Commission was without jurisdiction to try the accused in this case for offenses against British Nationals. There is no merit in this contention. The Commission was an agency of the Supreme Commander for the Allied Powers and was appointed as required by him. It has been repeatedly held that the Commission has jurisdiction. (Case Docket No. 128, Nakajima et al).

(2) That the findings of the Commission are against the weight of the evidence. The Commission was obliged to consider any and all evidence that had probative value. It is believed that the findings of the Commission are sustained by the evidence. Some of the affidavits referred to the accused by "nickname", and some by the legal name, but the affidavits and statements described the accused and their alleged criminal deeds in such manner that the court by comparing the corroborating affidavits and statements could easily determine that the four accused were involved as set out in the specifications.

(3) That the omnibus specification failed to apprise the named accused of the offense charged against him, thereby making it impossible for the accused to properly prepare his evidence. This point is not well taken, for the defense was furnished with the affidavits and statements which in the case of each accused contained names of offenders and alleged offenses which were not covered by the other specifications. Such an omnibus specification was proper so long as it was worded to embrace offenses not alleged in other specifications.

(4) That the sentences imposed upon the several accused persons are in each instance unreasonable, harsh and excessive. It was incumbent upon the Commission to pass such sentences as it felt were truly justifiable.

Based upon the record in each case the sentence imposed is justified.

The prosecution is not filing a reply brief.

No ruling of the Commission is deemed to have affected adversely the substantial rights of any of the accused.

PURL: https://www.legal-tools.org/doc/a9087d/

5. Recommendations: Restricted

No letters of clemency were submitted. The only request for clemency was in the "Motion for Modification" filed by the defense. The charge and specifications against each accused of which he was found guilty allege violations of the laws and customs of war and were supported by the evidence. It is recommended that the sentence as to each of the four accused be approved. In compliance with the established policy, owing to the length of time each accused has spent in confinement prior to the date of sentence, it is recommended that credit be given for the length of time designated opposite the name of each accused:

Terukichi Saito was confined 2 December 1945, sentenced 14 October 1947 to confinement at hard labor for ten years; credit, nineteen and one-half months.

Shooichi Sasaki was confined 4 January 1946, sentenced 14 October 1947 to confinement at hard labor for five years; credit, eighteen and one-half months

Kiyamatsu Suda was confined 18 April 1946, sentenced 14 October 1947 to confinement at hard labor for seven years; credit, fifteen months.

Seiichi Yutani was confined 7 January 1946, sentenced 14 October 1947 to confinement at hard labor for ten years; credit, eighteen months.

6. Action:

Attached hereto are forms of action designed to carry into effect the above recommendations.

T. O. HAGEN
Major CmlC
Judge Advocate Section
Reviewer

I concur in general with the views expressed in the foregoing review.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

AB

Restricted

PURL: https://www.legal-tools.org/doc/69087d/